

Can I provide a second opinion to a client where another solicitor is currently acting for that client?

Yes, you can. There is nothing unethical in principle about providing a second opinion. Equally, you may decline to act, as solicitors are not subject to the 'cab rank rule' as barristers are.

The 'no contact rule' which forbids direct communication with the client of another solicitor does not apply in these circumstances (see [What is the rule about communicating with the client of another solicitor?](#))

There is no obligation to inform the other solicitor of the instructions, although there is a view that you should do so, as a matter of professional courtesy, unless the client instructs otherwise. Of course, you would need client consent to inform the other solicitor. If the client refuses consent, you may refuse to act on that basis.

The client should be told at the outset of the conditions under which you are prepared to act, and also that instructing you to provide a second opinion may possibly provide 'just cause' entitling the other solicitor to terminate their retainer under **Rule 13.1.3** of the [Australian Solicitors Conduct Rules](#) and the common law (see [Rigoli Lawyers v Arman](#) [2009] FamCA 42 at [39], [40]) or the express terms of a retainer or costs agreement. The potential client should also be warned of the consequences of the current solicitor terminating the retainer including any additional delay and cost, and the outgoing solicitor's right to assert a lien and the effect of that.

You should avoid undermining the client's relationship with the current solicitor (subject to providing the client with full and frank advice as necessary - some 'diplomacy' may be required) and you should not seek to entice the client to transfer their instructions to you. A client's choice of solicitor is entirely a matter for them and the client should not be improperly influenced in this choice.

Of course, you need to ensure that you have sufficient information to provide proper advice, so that you are able to fulfil your duties to the client and avoid a negligence claim. Your advice may need to be appropriately qualified. There are obvious dangers in providing advice where you do not have access to the complete file of the current solicitors.

Even if you decline to act, your discussions with this 'potential client' should be considered confidential.

Where a solicitor refers one of their clients to you for specialist advice, perhaps in relation to a particular aspect of a matter, or for a matter generally, then as a general principle, and as a matter of professional courtesy, you should not take advantage of the referral to enlarge the scope of your representation of the client, either to the matter generally or to other matters.

See also:

- [Giving a second opinion to a non-client](#) by Stafford Shepherd 17 April 2013
- 'Ethics: Critical colleagues, second opinions and solicitor swapping' by Virginia Shirvington, Law Society Journal (NSW) July 2001 p.45 (copy available to QLS members from the [Supreme Court Library](#)).